

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5347 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT WATER SUPPLY AND SEWERAGE BOARD

Versus

JENTILAL LAKHABHAI VIRAMGAMI

Appearance:

1. Special Civil Application No. 5347 of 2001
MR HS MUNSHAW for Petitioner No. 1
MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Munshaw for the petitioner and Mr. Paul for the respondent. By way of this petition, the petitioner has challenged the award

made by the labour court, Jamnagar in Reference NO. 615 of 1992 dated 7th August, 2000 whereby the labour court has granted reinstatement in favour of the petitioner on his original post without back wages for the intervening period.

Learned advocate Mr. Munshaw appearing for the petitioner has submitted that the respondent has not completed 240 days continuous service and he was appointed as daily wager for a limited period. According to Mr. Munshaw, the respondent has abandoned the job and has not joined the duty though he was informed to join the duty. According to him, this aspect has not been examined by the labour court. He has submitted that it was not a case of termination but a case of abandonment of duty. He has also submitted that the respondent was appointed in the scarcity work on 7th April, 1992 and he completed only 87 days and thereafter, he abandoned the job without informing the petitioner and thereafter, it was brought to the notice of the respondent by letter dated 22nd December, 1992 that and the said letter was received by the respondent but the respondent has failed to report for work. The petitioner, therefore, addressed a letter to the labour court on 4th January, 1993 by Registered Post A.D. wherein it was mentioned that though the petitioner has called upon the respondent, the respondent has failed to report for work. He has submitted that as and when the work was available, they were calling the daily wagers and after completion of such work, their services were being terminated automatically and, therefore, there is no need to comply with the provisions of section 25-F of the Industrial Disputes Act, 1947. According to him, these facts were not appreciated by the labour court in their proper perspective and the labour court has, in view of these facts, committed an error in holding that there was no compliance of section 25-F and has also erred in making an award of reinstatement. He has also submitted that the petitioner led oral evidence vide Exh. 21 before the labour court and also produced certain documents but the said documents were ignored by the labour court and the oral evidence led by the petitioner has also not been appreciated by the labour court properly and, therefore, there is an error committed by the labour court in making the award in question and, therefore, interference of this court is necessary.

Learned advocate Mr. Paul appearing for the respondent workman has, on the other hand, submitted that the respondent has produced documentary evidence at Exh. 9 and Exh. 20 and was examined at Exh. 10 and he has

deposed before the labour court in terms of the averments made by him in the statement of claim and his oral evidence was cross examined by the petitioner. The respondent has deposed before the labour court that he was engaged for scarcity work and that he was attending the work as and when he was called by the petitioner. It has been denied by him that he was working at Rajkot. It was also mentioned by him that after his termination, new recruitment was made by the petitioner for the same work. He has submitted that the labour court has considered the documentary evidence at Exh. 22 wherein it has been specifically mentioned that he has completed 240 days' continuous service and the labour court has relied upon the said documentary evidence at Exh. 22 and the labour court has also considered that the persons junior to the respondent were considered and on the basis of these consideration, award of reinstatement was passed by the labour court without back wages for the intervening period and, therefore, according to Mr. Paul, award in question is legal, valid and proper award and the labour court has not committed any error in passing the award in question which would require interference of this Court in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

I have considered the arguments made by both the learned advocates. I have also perused the award in question and the documents produced alongwith the present petition. The labour court has verified the record produced before it. The labour court has observed that the workman was working since beginning in the office at Jamjodhpur and prior to that, he worked at Jamnagar office in the year 1980 which is evident from the record at Exh. 22. Even the witness for the petitioner has also admitted that the daily wagers are also being transferred and in this case, transfer order has not been produced but document shows that the workman might have been transferred from Jamnagar to Jamjodhpur. The labour court has also observed that at the time of deposition, it is admitted that at present there is scarcity prevailing and yet the respondent has not been offered the work by the petitioner which shows clear breach of section 25-G & H of the Industrial Disputes Act, 1947. The labour court has observed that it is true that the daily wagers cannot claim status of permanent worker but the provisions of law clearly shows that the retrenched workman has to be offered work first in order of seniority and admittedly that has not been complied with. It has been observed that it was admitted that the persons junior to the workman concerned are working and they have been transferred from Jamnagar to Jamjodhpur or

elsewhere. The contention raised by the petitioner that it is not an industry as defined under the I.D. Act, 1947 has been considered by the labour court and the labour court has come to the conclusion that the petitioner is an industry under the definition as per section 2(j) and has also found that there was breach of section 25-F, G and H of the Industrial Disputes Act and, therefore, the labour court has passed the award in question granting only reinstatement without continuity and back wages. According to my opinion, award made by the labour court is supported by the reasons based on the evidence. Therefore, according to my opinion, no interference is required to disturb such findings of fact recorded by the labour court. Mr. Munshaw has not been able to point out any jurisdictional error or procedural irregularity committed by the labour court. Therefore, no interference is required in exercise of the powers under Article 226 and/or 227 of the Constitution of India. There is no substance in the present petition and the same is required to be rejected.

Accordingly, this petition is dismissed. Rule is discharged. There shall be no order as to costs. Interim relief, if any, shall stand vacated.

At this stage, learned advocate Mr. Paul appearing for the workman has submitted that some directions are required to be issued to the petitioner corporation to implement the award in question within some reasonable period. Considering the request made by Mr. Paul, it is directed to the petitioner to implement the award in question within six weeks from the date of receipt of the copy of this order. Petitioner is further directed to pay the full wages to the respondent workman from the date of the award in question i.e. 7th August, 2000 till the actual date of his reinstatement within three months from the date of receipt of copy of this order.

18.3.2002. (H.K.Rathod, J.)

Vyas